

SUMMARY ANALYSIS OF AMENDED BILL

Author: Assembly Revenue & Taxation Committee Analyst: Gail Hall Bill Number: AB 3078

Related Bills: See Prior Analysis Telephone: 845-6111 Amended Date: August 11, 2008

Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Modify Group Return Provisions / Real Estate Withholding for Certain Non-CA Entities / Other State Tax Credit Claims / TP Advocate Penalty Relief / Increase Threshold for Imposing Estimated Tax Penalty / Eliminate Double Inclusion of Income

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would do the following:

1. Allow entities to file a tax return on behalf of certain nonresidents.
2. Close loopholes in current tax withholding on the payments nonresident individuals and non-California businesses receive from the sale of California real property.
3. Extend the statute of limitations for claiming the credit for taxes paid to another state.
4. Give discretionary authority to the Taxpayers' Rights Advocate to grant relief from penalties, fees, or interest imposed on a taxpayer because of erroneous actions of the department.
5. Increase the Personal Income Tax (PIT) estimated tax penalty threshold.
6. Clarify the rules for the elimination from income of certain dividends received.

Board Position:

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 N OUA PENDING

Legislative Director

Date

Brian Putler

08/15/08

SUMMARY OF AMENDMENTS

The August 11, 2008, amendments made the following changes to the Taxpayer Advocate (Advocate) provision:

- Repeals its provisions on January 1, 2012, unless a later statute extends or deletes the repeal date.
- Reenacts current law's Advocate statute upon the repeal date of this provision.
- Removes repeal language from the provisions related to Advocate annual reporting requirements.

The August 11, 2008, amendments raise a new "Technical Concern" which is discussed in the analysis below. The "Effective/Operative Date and "This Provision" discussions are revised. The remainder of the department's analysis of the bill as amended August 6, 2008, still applies.

EFFECTIVE/OPERATIVE DATE

The provisions related to the Advocate would be effective on January 1, 2009, and specifically operative for requests for Advocate consideration that are received by the Advocate on or after January 1, 2009, irrespective of the tax year involved. In addition, the provision would, by its own terms, be repealed as of January 1, 2012, unless a later enacted statute deletes or extends that date.

ANALYSIS

THIS PROVISION – TAXPAYER RIGHTS ADVOCATE

The "This Provision" discussion in the department's analysis of the bill as amended July 2, 2008, (included below) still applies except for the addition of a repeal date relating to the expanded responsibilities of the Advocate (see underlined wording) and the removal of the repeal language relating to Advocate annual reporting requirements (see ~~strikeout~~ wording below) and has been provided below for convenience.

"This provision would expand the responsibility of the Advocate to include resolution of taxpayer issues identified by Franchise Tax Board (FTB) employees. This bill would also authorize the Advocate to waive (grant relief from) penalties or additions to tax, fees, and interest that are attributable to any of the following:

- Erroneous action or erroneous inaction by the FTB in processing documents filed or payments made by a taxpayer,
- Unreasonable delay caused by the FTB, or
- Erroneous written advice that did not qualify for relief under Chief Counsel authority.

Relief may be granted only in situations where no part of the error is attributable to the taxpayer and relief is not available under any other statute or regulation.

The Chief Counsel of the FTB must concur with the decision to grant relief when the total reduction in penalties, fees, additions to tax, or interest exceeds \$500. If the total relief granted exceeds \$7,500, the Chief Counsel must notify the three-member Franchise Tax Board. The threshold amounts are to be adjusted annually by the percentage change in the California Consumer Price Index. Relief at any level requires a public record to be placed in the office of the Executive Officer of the FTB that includes the following information:

- The taxpayer's name,
- The total amount involved,
- The amount payable or refundable due to the error or delay, and
- A summary of why the relief is warranted.

A refund may be paid as a result of the relief granted only if the written claim for refund is received by the Advocate within the applicable statute of limitations. Any decision for relief is not subject to review in any administrative or judicial proceeding and no other entity may participate in the grant or denial of relief.

The provision discussed above would be repealed by its own terms on January 1, 2012, and existing law would be restored as of that date, unless a statute is later enacted that extends or deletes that date.

This provision would require the Advocate to include in its annual report to the Legislature a summary of the instances where relief was granted, the nature of the error or delay, and the steps taken by the department to remedy systemic issues that required relief. ~~This provision would be repealed by its own terms on January 1, 2012, and existing law would be restored as of that date, unless a statute is later enacted that extends or deletes that date.~~

The provision would specify that the provisions granting relief shall apply to requests for Advocate consideration that are received by the Advocate on or after January 1, 2009, irrespective of the taxable year involved."

TECHNICAL CONCERN

The provision that gives authority to the Advocate to grant relief would specifically be repealed as of January 1, 2012, but the reporting requirement relating to the granting relief has no repeal date. This issue is the result of a drafting error that would have no impact on the department's ability to implement this provision, but should be corrected when appropriate.

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